

SUPPORTING DOCUMENT NO. 5
RESPONSES TO PUBLIC COMMENTS

**California Regional Water Quality Control Board
San Diego Region**

**Mission Valley Terminal
Tentative Addendum No. 5 to Cleanup
and Abatement Order No. 92-01**

**Responses to Public Comments from Public Hearing
on March 9, 2005 and Written Comments Submitted
on/before March 9, 2005**

April 13, 2005

COMMENTS FROM THE CITY OF SAN DIEGO

Comment from Richard Mendes, Marcie Streirer, Chris Gonaver, and Richard Oppen:

The City requested that the cleanup dates proposed in the Addendum not be viewed as the "final decision" on the timing for completion of remediation. The City asks that a requirement be added to the Addendum to reconsider the cleanup dates within one year's time to reconsider their appropriate acceleration.

Regional Board Response:

Tentative addendum No. 5 to Cleanup and Abatement Order 92-01 (the "tentative addendum") regulates the activities of the Dischargers in conducting the cleanup and abatement of groundwater pollution caused by past releases of fuel wastes from the Mission Valley Terminal (MVT). The tentative addendum does not regulate the activities of the Regional Board and the Order has not been modified to reflect any obligation on the part of the Board to reconsider action within one year's time. However, given the current site-specific uncertainties and the plan to evaluate additional remedial technologies, it would seem reasonable to conduct a re-evaluation of the Addendum cleanup dates after such time as the planned studies have been completed and the results submitted to the Regional Board for review and consideration.

Comment from Richard Mendes, Donna Frye, Richard Oppen:

Incorporate into the Tentative Addendum, the cleanup technologies and contamination investigations from the "Summary of Understanding" agreement entered into by the City of San Diego and Kinder Morgan.

Regional Board Response:

The basic elements of the "Summary of Understanding" that deal with the MVT cleanup have been added to the tentative addendum in Finding No. 8.

Under Water Code section 13360, the Regional Board may not "specify the design, location, type of construction, or particular manner" of compliance with a cleanup and abatement order (and other most other Orders prescribed by the Regional Board) and dischargers can comply in any lawful manner. This restriction "is a shield against unwarranted interference with the ingenuity of the Dischargers subject to the cleanup and abatement order, who can elect between available strategies to comply with the cleanup objectives and time schedule prescribed in the order. The Regional Board will concur with any investigative and cleanup and abatement proposal the discharger demonstrates, and the Board finds, to have a substantial likelihood to achieve compliance, within a reasonable time frame, with cleanup goals and objectives and which implement permanent cleanup solutions.

Accordingly, the tentative addendum mandates technically feasible cleanup objectives, cleanup progress monitoring metrics and a schedule for timely compliance; the addendum does not mandate the use of specific cleanup technologies other than those proposed by the Dischargers. The Regional Board may consider additional data from other technology evaluations as these are provided by the Dischargers. At this time the tentative addendum reflects the Regional Board's assessment of the cleanup technologies that have been proposed to the Regional Board. If the Dischargers propose new cleanup technologies to the Regional Board, and results from pilot tests of the newly proposed technologies becomes available, it may be appropriate for the Regional Board to re-evaluate the current cleanup dates.

In the "Summary of Understanding", the City of San Diego (the "City") and Kinder Morgan agreed to an investigation of the utility lines that may be impacted by the pollution. Regional Board staff will require this work under a separate investigative order that will deal specifically with the utility line investigation.

Comment from Richard Mendes and Donna Frye:

Accelerate the cleanup of "residual" LNAPL to December 31, 2008.

Regional Board Response:

The directives of the tentative addendum mandate technically feasible cleanup performance objectives and a time schedule; the addendum does not mandate the use of specific cleanup technologies other than those proposed by the Dischargers.

These cleanup performance objectives mandated in the addendum are based on data currently available from the site, the peer-reviewed literature, and professional experience. It is possible that the results of pilot testing of remedial measures complimentary to the current groundwater extraction and SVE/Air Sparging system may suggest ways to enhance and speed remediation. However, it is unlikely that any alternative remedial technology can be practicably implemented at this scale in about a three-year time frame. It may be reasonable for the Regional Board to consider additional data from other technology evaluations as they become available. The Regional Board will determine if it is necessary or desirable to re-evaluate the current cleanup dates as those data becomes available. Accordingly, the Regional Board will not mandate acceleration of the cleanup of "residual" LNAPL to December 31, 2008 in the tentative addendum.

Comment from Richard Mendes and Donna Frye:

Add the Time Schedule Order deadline of December 31, 2007, for removing "measurable" non-aqueous phase liquid (NAPL) petroleum product, to the Addendum.

Regional Board Response:

The December 31, 2007 date for removing NAPL is not in the Mission Valley Terminal Time Schedule Order (R9-2002-0042). It appears that this date came from the Discharger's report titled "Summary Report, Time Schedule Order R9-2002-0042", and was a proposed a "Cleanup Milestone" that required the Dischargers to "reduce measurable thickness of LNAPL in the off-site area to less than 0.01 feet" by January 2007. Monitoring well data indicate that "measurable thickness" of LNAPL has not been more than 0.01 feet in any of the off-site wells since May 2003.

Directive No. 2 of the tentative Order mandates that the Dischargers shall, as soon as practicable and no later than **December 31, 2010**, remove residual light non-aqueous phase petroleum liquid (LNAPL) from subsurface soil and ground water beyond MVT to the extent technically practicable. The tentative Order has not been modified since this requirement is based upon a technically achievable compliance date and also clearly indicates that the Dischargers are expected to remove LNAPL "as soon as practicable."

Comment from Marcie Streirer:

Cleanup off property pollution by 2010 so that the groundwater can be used by the City of San Diego for public supply.

Regional Board Response:

The tentative Addendum provides a reasonable compliance schedule for cleanup of off property pollution and other remedial action and requires the Dischargers to develop a contingency plan for providing a replacement water supply to the owners of affected water supply wells. The compliance dates in the tentative addendum balance the need to cleanup the groundwater pollution as soon as possible while at the same time taking into account the pace of cleanup that is technologically and economically feasible.

The directives of the tentative addendum mandate technically feasible cleanup performance objectives and a time schedule; the addendum does not mandate the use of specific cleanup technologies other than those proposed by the Dischargers. The cleanup performance objectives mandated in the addendum are based on data currently available from the site, the peer-reviewed literature, and professional experience. It is possible that pilot testing of remedial measures complimentary to the current groundwater extraction and SVE/Air Sparging system may suggest ways to enhance and speed remediation. It may be reasonable for the Regional Board consider data from other technology evaluations as they become available. The Regional Board will determine if it is necessary or desirable to re-evaluate the current cleanup dates as those data becomes available.

Since the tentative Addendum includes reasonable cleanup compliance dates and a contingency plan for the Dischargers to provide replacement water supplies to owners of affected water supply wells; the cleanup dates have not been modified in the tentative Addendum.

COMMENTS FROM KINDER MORGAN ENERGY PARTNERS LP, O/P SFPP LP

Comment from Kevin Ryan:

Kinder Morgan requested clarification of Directive No. 5 that requires the Dischargers to submit a technical report regarding the on-property pollution. They also requested an extension of the due date for the technical report because they would like to focus their efforts on the off-property cleanup.

Regional Board Response:

Directive No. 5 of the tentative addendum requires the Dischargers to submit a technical report that investigates the pollution and proposes methods to cleanup the on-property pollution. The language of Directive No. 5 has been changed to clarify that this technical report and investigation deals with the on-property pollution only. The due date for this technical report is September 9, 2005. This date is reasonable and will ensure prompt cleanup of the on-property pollution.

Comment from Kevin Ryan:

Kinder Morgan requests that the spill reporting requirements in the Cleanup and Abatement Order (CAO) Addendum be consistent with their current spill reporting requirements of reporting spill over one barrel (42 gallons) or more to the National Response Center (NRC) and the California Office of Emergency Services (OES).

Regional Board Response:

The proposed spill reporting requirements in the tentative addendum are more stringent than the current statutory reporting requirements but only regarding spill reporting to the Regional Board. In order to protect the designated beneficial uses of the groundwater, the tentative addendum includes more stringent spill requirements for reporting to the Regional Board. The spill reporting requirements in the order are reasonable and protective of the waters of the State. Spill reporting for OES and NRC are still in effect according to the Statute and any additional requirements of those agencies'.

Comment from Kevin Ryan:

Kinder Morgan clarified that each Discharger at the MVT is responsible for reporting spills and remediation data for new petroleum releases at their facility.

Regional Board Response:

Comment noted.

COMMENTS BY SHELL OIL PRODUCTS US

Comment from Curtis Stanley:

Shell Oil Company (Shell) restated its request to be removed as a responsible party from CAO 92-01 and all Addenda. Shell states that their request is supported by technical information gathered during site investigations at MVT. Additionally, Shell cited the findings of a court ruling that found Kinder Morgan responsible for the cleanup of all of the current pollution at MVT.

Regional Board Response:

Regional Board staff has reviewed Shell's site conceptual model of the pollution at MVT and agrees that Shell should be removed from the CAO and addenda thereto. The tentative addendum has been revised to exclude Shell from the CAO. The Regional Board will issue a separate CAO for the cleanup of discharges directly associated with the Shell terminals.

**COMMENTS BY SAN DIEGO BAYKEEPER AND THE SURFRIDER
FOUNDATION, SAN DIEGO CHAPTER**

Comment from Marco A. Gonzalez:

Though we support the current Tentative Addendum, we are concerned that remediation of the problem in the proposed time frame is insufficient. The original CAO was issued in January of 1992, which means we have now passed the 15 anniversary of regulating this substantial illegal discharge. The Baykeeper and Surfrider believe that it is unfair to California taxpayers that so many resources would be allocated to a single discharge remediation effort, over so many years, without financial compensation to the State. Given the limited staffing and budget afforded the Regional Boards, coupled with the egregiousness of the longstanding violations here, it would be appropriate to issue a finding of Administrative Civil Liability against Kinder Morgan in conjunction with the Amended CAO.

Regional Board Response:

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The past violations of the CAO and delays in investigating and cleaning up the pollution are a concern of the Regional Board and the Board may consider appropriate enforcement actions to address these issues at a separate public hearing sometime in the future. However, the action currently before the Regional Board is limited to modification of the CAO to establish technically and economically feasible cleanup performance objectives, a time schedule to achieve the cleanup objectives, and consideration of the specific cleanup technologies proposed by the Dischargers.